S.B.Civil Misc.Appeal No.279/95
M/s United India Insurance Co. Ltd.
vs.
Smt. Kartar Kaur & anr..

Date of Order: 14.7.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr.Yaswant Mehta for the appellant.
Mr. D.K. Parihar for the respondents.

Heard learned counsel for the appellant.

This appeal is against the award dated dated 29.4.1995 passed by the Workmen Compensation Commissioner,Bhilwara Claim Case No.39/88.

Brief facts of the case are that the applicant mother of deceased Boota Singh submitted claim petition before the Workmen Compensation Commissioner,Bhilwara stating therein that her son Boota Singh was driver for the truck No. PUU 8611. He was driver appointed by the non-applicant Paramjeet Singh. When he took the said truck on 6.5.1988 in discharge of his duties under the employment, her son Boota Singh was killed, for which F.I.R. was lodged. According to the applicant-respondent mother of the deceased, the deceased was of the age of 26 years only and he was getting the salary of Rs.1000/- per month. As per law, the applicant was entitled for Rs.86.112/- with interest and penalty amount. Several objections were raised before the Workmen Compensation Commissioner,Bhilwara by the contesting parties. The

Workmen Compensation Commissioner,Bhilwara, after rejecting all the pleas of the non-applicant, held that the deceased died while in service and while discharging his duties under the employment. The Workmen Compensation Commissioner,Bhilwara held that the claimant is entitled to compensation of Rs.83,192/- and also awarded Rs.5000/- against penalty and interest.

According to the learned counsel for the appellant, Boota Singh was not driving the vehicle and the Workmen Compensation Commissioner,Bhilwara has committed error of fact in holding him as driver. It is also submitted that if he was killed by some one then the dependent of the deceased cannot get any compensation under the provisions of the Workmen Compensation Act nor any liability can be fastened upon the appellant Insurance Company.

I considered the submissions of the learned counsel for the appellant and perused the facts and the record also.

Whether Boota Singh was driver in the vehicle and was in the employment of non-applicant no.1 is concerned, that is a pure question of fact and has been decided by the learned Workmen Compensation Commissioner,Bhilwara after careful appreciation of the evidence and after appreciation of the documentary evidence- F.I.R. Ex.P.1 also. I do not find that the learned Workmen Compensation Commissioner, Bhilwara has committed any error of fact in holding that Boota Singh

was the driver and was in employment of non-applicant no.1.

So far as contention of the appellant that Boota Singh died not because of accident but was intentionally killed is the case of the claimant herself, therefore, there is no liability of the employer or at least of the Insurance Company, the argument advanced by the learned counsel for the appellant is devoid of any force because of the simple reason that deceased was not only in the employment at the relevant time but was also discharging his duties of driving the truck and during course of employment, he died, may it be because of killing but the liability of the employer is there under the provisions of the Workmen Compensation Act.

In view of the above, I do not find any merit in this appeal and hence the appeal of the appellant is dismissed.

(**PRAKASH TATIA),J.**

mlt.